REMARKS

Claims 1-54 are pending in the application.

Claims 1-54 have been rejected.

Claims 1, 3-8, 10, 12-15, 17, 19, 21, 23, 26-28, 30, 32, 37, 39, 41-42, 44, and 47-54 have been amended, as set forth herein.

I. CLAIM OBJECTIONS

Claims 15, 26, and 28 were objected to because of various informalities noted in the Office Action. The Applicant has amended Claims 15, 26, and 28 to correct these informalities. The Applicant respectfully requests withdrawal of the objections. The Applicant has also amended various other claims to correct additional informalities noted by the Applicant.

II. REJECTION UNDER 35 U.S.C. § 102

Claims 1, 4-5, 8-10, 13-17, 22-23, 28-30, 32, 35-37, 39-41, 43-44, and 46-50 were rejected under 35 U.S.C. § 102(b) as being anticipated by McDonough et al. (U.S. 5,625,748) ("*McDonough*"). Of these, Claims 1, 10, 17, 23, 30, 37, 41, 44, and 47-50 are independent claims. This rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed.

Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

McDonough recites a system that classifies communications into different topics. (*Col. 4, Lines 27-34*). The system includes a speech event frequency detector. (*Col. 5, Lines 45-48*). The speech event frequency detector identifies the frequency at which various words or phrases appear in a communication. (*Col. 6, Lines 23-29*). The communication is then classified based on the frequency that the words and phrases are used. (*Col. 5, Lines 62-64*).

McDonough simply recites classifying communications based on the frequency at which words and phrases appear in the communications.

Regarding independent Claims 1, 10, 17, 23, 47, and 48, *McDonough* fails to show associating scores with different words and phrases detected by the system and using the scores to select an action to be performed. *McDonough* therefore fails to anticipate "one or more voice representations," where each voice representation is "associated with a score." *McDonough* also fails to anticipate analyzing a voice message to "generate a total score associated with the voice message" and performing one or more actions "based on the total score." As a result, *McDonough* fails to show each and every element of Applicant's invention as recited in independent Claims 1, 10, 17, 23, 47, and 48 (and their dependent claims).

Regarding Claims 30, 37, 41, 44, 49, and 50, *McDonough* fails to show analyzing the tone and/or frequency of speech in a voice message to determine which action to perform. *McDonough*

therefore fails to anticipate analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message." As a result, *McDonough* fails to show each and every element of Applicant's invention as recited in independent Claims 30, 37, 41, 44, 49, and 50 (and their dependent claims).

Accordingly, the Applicant respectfully requests that the Examiner withdraw the § 102(b) rejection of Claims 1, 4-5, 8-10, 13-17, 22-23, 28-30, 32, 35-37, 39-41, 43-44, and 46-50.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 2, 11, 18, and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *McDonough* in view of Furui, "Digital Speech Processing, Synthesis, and Recognition" ("*Furui*"). Claims 3, 12, 19, 25, 31, and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *McDonough* and *Furui* in further view of Epstein et al. (U.S. 6,327,343) ("*Epstein*"). Claims 6-7, 20-21, 26-27, 33-34, 42, 45, and 51-54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *McDonough* in view of *Epstein*. These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d

1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

As described above, independent Claims 1, 10, 17, 23, 30, 37, 41, and 44 are allowable over *McDonough*. In particular, *McDonough* fails to recite the use of "one or more voice representations" each "associated with a score," analyzing a voice message to "generate a total score associated with

the voice message," and performing one or more actions "based on the total score." *McDonough* also fails to recite analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message." The Office Action fails to indicate that the remaining references disclose, teach, or suggest these elements of the independent claims. Therefore, Claims 2-3, 6-7, 11-12, 18-21, 24-27, 31, 33-34, 38, 42, and 45 are therefore allowable due to their dependence from allowable claims.

Similarly, regarding Claims 51-54, the Office Action relies on *Epstein* simply to show the use of a computer readable medium. The Office Action fails to indicate that *Epstein* discloses the use of "one or more voice representations" each "associated with a score," analyzing a voice message to "generate a total score associated with the voice message," and performing one or more actions "based on the total score" as recited in Claims 51-52. The Office Action also fails to indicate that *Epstein* discloses analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message" as recited in Claims 53-54.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejection of Claims 2-3, 6-7, 11-12, 18-21, 24-27, 31, 33-34, 38, 42, 45, and 51-54.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining claims in the application are in condition for allowance and respectfully requests an early allowance of such claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***rmccutcheon@davismunck.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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